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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JEFFREY T. BLUE

Appeal 2007-4454
Application 10/030,378
Technology Center 1600

Decided: February 6, 2009

Before ERIC GRIMES, LORA M. GREEN, and RICHARD M. LEBOVITZ, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant has requested rehearing of the decision entered November 6, 2007 ("Decision"). The request for rehearing is denied.

DISCUSSION

Appellant argues that "the Board relied on a new and broader interpretation of the claims than previously asserted by the Examiner," and that interpretation amounts to a new ground of rejection. (Req. Reh'g 1.) Specifically, Appellant asserts that "[t]he arguments presented by the Examiner during prosecution of the present application do not clearly indicate an interpretation of time intervals as only excluding 'simultaneously.'" (Req. Reh'g 4.)

The Examiner, however, in responding to Appellant's arguments, specifically pointed to the legend of Figure 2 of Banki, noting that Banki repeated steps a) and b) numerous times (Ans. 12). Thus, we disagree that the claim interpretation as set forth in the Decision amounted to a new ground of rejection.

As to claim 24, for which we made a new ground of rejection (Decision 11-12), Appellant reiterates the arguments as to claim 1 (Req. Reh'g 8), which are not found to be persuasive for the reasons set forth in the Decision (Decision 3-6). Appellant argues further that the "skilled artisan would not look to modify Esolen using the methods employed by Banki to determine the mechanism of measles virus-induced cell death." (Req. Reh'g 8.) That argument is not found to be convincing for the reasons set forth with respect to rejection of claim 22 over the combination of Banki and Esolen (Decision 11-12).

Appellant further asserts that claims 4, 5, and 21 should not have been grouped with claims 18 and 19 (Req. Reh'g 9-10). As can be seen in the Appeal Brief (App. Br. 13), the arguments as to each group are the same, and in the Reply Brief, Appellant, in addressing the rejection of claims 18

and 19, specifically referenced the arguments made as to claims 4, 5, and 21 (Reply Br. 5).

The remainder of Appellant's arguments made in the Request for Rehearing have been considered, but those arguments do not "state with particularity the points believed to have been misapprehended or overlooked by the Board," as required by 37 C.F.R. § 41.52. The essence of Appellant's arguments is that he disagrees with the conclusions that we reached in the Decision. That is not a proper basis for a Request for Rehearing. For an Applicant dissatisfied with the outcome of a Board decision, the proper course of action is to appeal, not to file a Request for Rehearing to re-argue issues that have already been decided. *See* 35 U.S.C. §§ 141, 145. Since Appellant has not pointed out any points that we overlooked or misunderstood, we decline to revisit our earlier conclusions.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

REHEARING DENIED

Ssc:

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